



A 11/2709 #116

Docket No.: 881075-3

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Hrabik et al  
Serial No. : 09/770,525  
Filed : January 25, 2001

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For : **METHOD AND APPARATUS FOR VERIFYING THE INTEGRITY AND SECURITY OF COMPUTER NETWORKS AND IMPLEMENTATION OF COUNTER MEASURES**

Examiner : Jenise E. Jackson

Group Art Unit : 2131

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Alexandria, VA 22313

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**REQUEST FOR WITHDRAWAL OF FINALITY OF OFFICE ACTION**

Applicant observes that the Action of May 23, 2003 was prematurely made final. Pursuant to MPEP § 706.07(c) and (d), Applicant requests that the premature finality of the Action of May 23, 2003 be withdrawn, and that the Response to Office Action filed herewith be entered as of right.

**I. The Action of May 2003 is improperly final**

An RCE was filed in this application on March 26, 2003. The first Office Action following the RCE was made final.

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The Office Action of May 2003 fails to meet the test for finality set out in MPEP § 706.07(b). Section 706.07(b) states as follows (emphasis added):

**706.07(b) Final Rejection, When Proper on First Action**

The claims of a new application may be finally rejected in the first Office action in those situations where ... all claims of the new application (1) are drawn to the same invention claimed in the earlier application, and (2) would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application.

Claim 21 recites as follows:

21. A method for monitoring the integrity of a detection means associated with a computer, said computer being connected to a computer network, and configured to detect an attack on said computer, said method comprising the steps of:

correlating events across a plurality of devices associated with said computer network using said detection means;

establishing a secure link for the transfer of data between said detection means and a master system hierarchically independent from said detection means;

monitoring the status of said detection means through said secure link; and

registering information pertaining to the status of said detection means.

None of the independent claims that pre-existed the RCE (claims 1-22) recites this combination of elements. For example, the step of "correlating events across a plurality of devices associated with said computer network using said detection means" was never recited in any of the previous claims. Therefore, claim 21 submitted with the RCE is directed to something other than the "same" invention as existed before the RCE was filed.

Similarly, claims 11 and 22, reciting the new "correlating" step are directed to something other than the "same" invention as existed before the RCE was filed.

Because claims 11, 21 and 22 claim different inventions than the inventions of pre-RCE claims 1-22, final rejection is premature. Under MPEP § 706.07(c) and (d), finality may be withdrawn.

## II. Conclusion

For these reasons, the finality of the Action of May 23, 2003 should be withdrawn, and the Remarks in the accompanying Response to Office Action should be given the Examiner's full consideration.

It is believed that this paper occasions no fee. Kindly charge any fee due to Deposit Account No. 50-0675.

Respectfully submitted,

SCHULTE ROTH & ZABEL

Dated: August 12, 2003

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